



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

MGE/142762

PRELIMINARY RECITALS

Pursuant to a petition filed July 30, 2012, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance, a hearing was held on September 26, 2012, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly terminated petitioner's MA effective August 1, 2012 after receiving a final determination from the Disability Determination Bureau (DDB) that petitioner was found to be not disabled.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Belinda Bridges

Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Kelly Cochran
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County. He is not 65 years of age or older, does not have any minor children, and is not blind.

2. From January 2012 through July 2012 petitioner was found eligible for MA based on an initial determination that petitioner was presumptively disabled.
3. On June 19, 2012 the agency received the final determination from the Disability Determination Bureau (DDB) that petitioner was found to be not disabled.
4. On July 18, 2012 the agency issued a notice of decision to petitioner stating that effective August 1, 2012 his MA would end because he was found to be not disabled and met no other criteria to be nonfinancially eligible for that program.

DISCUSSION

An adult between ages 18 and 65, who does not have minor children, can be eligible for MA only if he is blind or disabled. Wis. Stats. §§49.46(1)(a) and 49.47(4)(a); see also Medicaid Eligibility Handbook (MEH), §4.1, available online at <http://www.emhandbooks.wisconsin.gov/meh-ebd/meh.htm>.

In this case, the issue centers on the determination of petitioner's status as disabled. From January 2012 through July 2012 petitioner was found eligible for MA based on an initial determination that petitioner was presumptively disabled. See MEH, §5.9. Federal Supplemental Security Income (SSI) law and regulations state that the SSI program can find an individual to be presumptively disabled and will be treated as a person with a disability until a final disability determination can be completed. To be treated as presumptively disabled by SSI means that the applicant's benefits can begin before the Social Security Administration (SSA), or its contracted agency, has formally determined the individual to be disabled. The regular disability application process must still be completed for persons with a presumptive disability. A presumptive disability decision stands until the DDB makes its final disability determination. *Id.*

MA Program policies require that an agency *must* act to discontinue presumptive disability MA when the Disability Determination Bureau finds an applicant "not disabled". See MEH, §5.9.6.3. That occurred here on July 18, 2012, and the agency followed the appropriate discontinuance procedures and issued timely and adequate written notice telling the petitioner that his MA coverage would end on August 1, 2012. That action must be affirmed. The petitioner was no longer eligible for "presumptive disability" – based MA as of August 1, 2012. The DDB decision controls the MA – Presumptive Disability case administered by the agency. The agency correctly followed MA policy. Petitioner was unsure of what transpired with the notice from the DDB stating that he was not disabled, is reminded that he needs to file a separate appeal regarding the finding that he was not disabled with the DDB or at least to follow up with the DDB to find out what his next step is there as to the disability. If he succeeds there and is found disabled, he would then again meet the nonfinancial requirements for his MA.

I add, assuming petitioner finds this decision unfair, that it is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

CONCLUSIONS OF LAW

The agency correctly terminated petitioner's MA effective August 1, 2012 after receiving a final determination from the DDB that petitioner was found to be not disabled.

THEREFORE, it is

ORDERED

That the petition for review herein be and the same is hereby dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

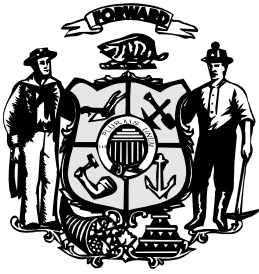
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 27th day of September, 2012

Kelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals

c: Milwaukee Enrollment Services - email
Department of Health Services - email



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on September 27, 2012.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability